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**Accepted / Filed**

**AUG 7 - 2014**

**REDACTED - FOR PUBLIC INSPECTION**

**Federal Communications Commission  
Office of the Secretary**

VIA ECFS

May 5, 2014

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th St., N.W.  
Room TW-A325  
Washington, DC 20554

**Re: Request for Review of a Decision of the Universal Service Administrator and Request  
for Confidential Treatment; WC Docket No. 06-122**

*96-45 & 05-337*

Dear Ms. Dortch:

Aventure Communication Technology, L.L.C. ("Aventure") is providing with this letter a Request for Review of a Decision of the Universal Service Administrator ("Request") and within this letter a request for confidential treatment of certain portions of the request and supporting documents.

Request for Confidential Treatment

Aventure, pursuant to 47 C.F.R §§0.457, 0.459, asks that portions of its Request be treated as confidential and not subject to public inspection. Certain portions of the Request as identified further below contain confidential and proprietary information that, if subject to public disclosure, would cause significant commercial and competitive harm to Aventure. As described below, Aventure's request satisfies the standards of grant of this request as set forth in Sections 0.457 and 0.459 of the Commission's Rules.

In accordance with Section 0.459(b) and in support of its request, Aventure provides the following information:

(1) Identification of Confidential Materials: Aventure seeks confidential treatment of the amount claimed due from Aventure in USAC Audit No. HC2011BE011 dated May 15, 2012, and as further disclosed in the Administrator's decision of October 29, 2013, Aventure's appeals within USAC, and action letters to Aventure from USAC, all of which are attached to the Request. (Attachments 1-5) The non-redacted version of the Request has been marked with the

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annotation "Confidential - Not for Public Disclosure or Inspection". Specifically, information on the amount claimed due by USAC that is designated as confidential, or appropriately marked "Begin Confidential" and "End Confidential" in the Request. Attachments 1 through 5 have been redacted accordingly. A "Redacted - For Public Inspection" version of the Request and the accompanying attachments intended for public inspection is being filed simultaneously in the Commission's Electronic Filing System.

(2) Circumstances Giving Rise to Submission of Information: Adventure requests that specific information in the Request be treated on a confidential basis under Exemption 4 of the Freedom of Information Act. The information designated as confidential includes the USAC Final Audit Report and information regarding Adventure's USAC contribution amount and the degree to which such amount would change based on USAC's recommendations. The information is competitively sensitive information that Adventure maintains as confidential and is not normally made available to the public. Release of the information would have a substantial negative impact on Adventure since it would provide competitors with commercially sensitive information.

(3) Degree to Which Information is Commercial or Financial: The information designated in the Request and in the Attachments as Confidential is of a highly sensitive commercial nature, containing non-public financial information concerning aspects of Adventure's business.

(4) How Disclosure Could Result in Substantial Harm: Disclosure of Adventure's confidential information regarding its USAC contributions, payments from USAC, or amount claimed due from Adventure in the USAC audit would give competitors a significant advantage by revealing sensitive business information about Adventure's business relationships and revenues.

(5) Measures Taken to Prevent Disclosure: The Request and Attachments provide information relating to Adventure's contractual and financial operations. Adventure holds all such information designated as "CONFIDENTIAL - NOT FOR PUBLIC DISCLOSURE OR INSPECTION", within the Request and Attachments in strict confidentiality and does not permit access to such information to any persons other than employees who require access to this information for the specific purpose of conducting business on behalf of Adventure.

(6) Public Access to Information, Third Party Disclosure: As noted above, Adventure has not made this information publicly available through any previous disclosures.

(7) Justification of the Period During Which the Material Should Not be Publicly Available: Adventure requests that the Commission hold this information out of public view, and cannot determine at this time any date on which this information should not be considered confidential.

(8) Additional Information: Because of the competitively sensitive nature of this information, Adventure respectfully requests that the Commission treat this filing as confidential and withhold the same from public inspection. Adventure has simultaneously filed a copy of the



Lundberg to FCC

Page 3

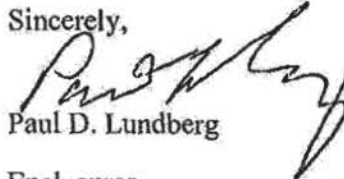
May 5, 2014

filing marked "**REDACTED - FOR PUBLIC INSPECTION**" so that the non-confidential information contained in the filing may be made available to the public.

Please contact the undersigned should you have any questions concerning the attached documentation, or Aventure's request for confidentiality pursuant to the Commission's rules. An original and four (4) copies of the confidential version of the Request are enclosed.

A copy of this Request is also being provided to the Universal Service Administrative Company as is represented in the certificate of service appended to the Request.

Sincerely,

  
Paul D. Lundberg

Enclosures

**REDACTED -  
FOR PUBLIC  
INSPECTION**

**REDACTED - FOR PUBLIC INSPECTION**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of the	)	
Request for Review by Aventure	)	WC Docket No. 06-122
Communication Technology, L.L.C.	)	
of Decision of Universal Service Administrator	)	

**REQUEST FOR REVIEW BY AVENTURE COMMUNICATION  
TECHNOLOGY, L.L.C. OF DECISION OF THE  
UNIVERSAL SERVICE ADMINISTRATOR**

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AVENTURE COMMUNICATION  
TECHNOLOGY, L.L.C.

Its Attorneys

Date: May 5, 2014

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## **I. GENERAL SUMMARY STATEMENT OF INTEREST, ISSUES FOR REVIEW AND RELIEF REQUESTED.**

Pursuant to Sections 54.719(c), 54.721, and 54.722 of the Federal Communications Commission ("Commission") rules, Adventure Communication Technology, L.L.C. ("Adventure") seeks review of findings by the Internal Audit Division of the Universal Service Administrative Company ("USAC") in an audit of Adventure's compliance with High Cost Support Mechanism Rules (USAC Audit No. HC2011BE011) of May 15, 2012.

The IAD report of May 15, 2012 concluded that Adventure incorrectly reported lines associated with calls to conference operators on the Adventure network as USF-Eligible Lines. The report based this conclusion on five findings:

1. The Adventure lines do not carry supported services.
2. The Adventure lines are not "revenue producing".
3. The Adventure lines are dedicated, high capacity Special Access circuits.
4. No calls terminated to locations within the Adventure service area, because the conference bridge locations cannot be defined as "end user" premises.
5. Adventure's designation as an Eligible Telecommunications Carrier (ETC) is in doubt.

On December 18, 2012, the USAC High Cost and Low Income Division sent a letter to Adventure asserting a claim for **begin confidential....end confidential** for virtually all high cost funds received by Adventure between 2007 and 2011. (Attachment 1) On February 18, 2013, Adventure filed with USAC a letter of appeal asking the High Cost and Low Income Division to reverse the findings

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of the IAD report. (Attachment 2) In a decision of October 29, 2013, the USAC administrator denied Aventure's letter of appeal of February 18, 2013. The administrator's decision of October 29, 2013 is appended as Attachment 3. On December 24, 2013, Aventure filed with USAC a "Letter requesting Board review" of the administrator's decision of October 29, 2013. The letter requesting Board review is appended as Attachment 4. On January 21, 2014, USAC denied Aventure's letter requesting Board review.

On March 4, 2014, USAC seeks to recover ~~begin confidential....end confidential~~ in High Cost program support previously dispersed to Aventure. The letter of March 4, 2014 is appended as Attachment 5. In response to the USAC letter, Aventure has filed the instant appeal.

Aventure seeks review and reversal of the IAD report and USAC administrator's decision on the following grounds:

1. The IAD report and administrator's decision are ultra vires the authority granted USAC by the FCC.
2. The specific findings of the IAD report and the administrator's decision are not supported by evidence or precedent.
3. A substantial portion of the forfeiture or reimbursement sought by USAC is barred by the one year statute of limitations set forth at 47 USC§503(b)(6).

## **II. SPECIFIC ISSUES FOR REVIEW**

### **A. Background and Final Audit Report**

In November 2011, IAD initiated an audit of Aventure. On May 8, 2012, IAD provided Aventure with a draft Detail Exception Worksheet (DEW) and conducted an Exit Conference with representatives of Aventure and their counsel. On May 15, 2012, Aventure, through

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counsel, submitted its opposition to Internal Audit Division Draft Detail Exception Worksheet ("DEW Opposition"). The DEW Opposition made the following points:

1. The DEW conclusions are not supported by an precedent and fail to comport with long established industry practices.
2. The DEW conclusions that Aventure's lines are not "working loops" and are special access lines are wrong as a matter of law and fact.
3. The DEW conclusions that the calls to Aventure's conference operators do not "terminate" in Aventure's service territory, and do not terminate to "End Users" are unsupported and ignore relevant precedent.
4. The DEW relies on an order of the Iowa Utilities Board is based on state law, and is inconsistent with FCC rules.
5. The DEW refuses to consider factors that mitigate the damages it asserts. Imposing a retroactive refund obligation on Aventure would cause irreparable harm.

On May 15, 2012, the IAD issued its IAD Report (USAC Audit No. HC2011BE011).

The report concluded that Aventure incorrectly reported lines associated with calls to conference operators on the Aventure network as USF - Eligible Lines. The report based this conclusion on 5 findings:

1. The Aventure lines do not carry supported services.
2. The Aventure lines are not "revenue producing".
3. The Aventure lines are dedicated, high capacity Special Access circuits.
4. No calls terminated to locations within the Aventure service area, because the conference bridge locations cannot be defined as "End User" premises.
5. Aventure's designation as an Eligible Telecommunications Carrier ("ETC") is in doubt.

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On December 18, 2012, the USAC High Cost and Low Income Division sent a letter to Aventure asserting a claim for \$6,454,952.00 in Federal Universal Service High Cost Program support dispersed for the 2007 - 2011 program years. On February 18, 2013, Aventure filed with USAC a letter of appeal asking the High Cost and Low Income Division to reverse the findings of the IAD report. (Attachment 2) On October 29, 2013, the USAC Administrator denied Aventure's appeal. (Attachment 3) On March 4, 2014, USAC sent Aventure an action letter indicating that USAC would seek to recover **begin confidential....end confidential** in High Cost Program support previously dispersed to Aventure for 2007 - 2011 program years. (Attachment 5)

On December 24, 2013, Aventure appealed the October 29, 2013 Administrative's decision to the USAC Board. (Attachment 4) By letter of January 21, 2014, the USAC Board denied Aventure's December 24, 2014 Request for Review. In response to USAC's March 4, 2014, action letter to Aventure (Attachment 5), Aventure has filed this instant appeal.

**B. The IAD Report and Administrative's Decision are ultra vires the authority granted USAC by the FCC.**

Section 54.702(c) of the FCC's rules restricts USAC to applying established FCC precedent, and prohibits USAC from making new policy or interpreting unclear policies:

**"The administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the act or the Commission's rules are unclear, or do not address a particular situation, the administrator shall seek guidance from the Commission". 47 C.F.R. §54.702(c)**

In discussions of specific decisions in the IAD Report and Administrative's Decision below, Aventure will identify numerous instances in which USAC has made new policy

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decisions, and made decisions in areas where the law clearly has not been settled by the Commission. In these instances, the IAD Report and Administrative's Decision are ultra vires USAC's delegated authority, and must be reversed.

**1. The IAD Report and Administrative's Decision disregard the FCC's Statement of the Law.**

Aventure's letter requesting Board review of December 24, 2013, appended hereto as Attachment 4, at pages 5-6 discuss USAC's disregard of the FCC's Statement of the Law and is incorporated by reference.

**2. The specific findings of the IAD Report and the Administrative's Decision are not supported by evidence or precedent and are unsustainable.**

Aventure's argument to USAC, which it incorporates here, is set forth in its letter requesting Board review of December 24, 2013, appended hereto as Attachment 4, at pages 6-13, set forth Aventure's arguments as to why the IAD Report and the Administrative's Decision are not supported by evidence or precedent.

**3. A substantial portion of USAC's refund claim against Aventure is barred by the one year statute of limitations under 47 USC §503(b)(6).**

Section 503(b)(6) of the Communications Act imposes a one year statute of limitations on actions for forfeiture or penalty. The USAC action letter of March 4, 2014, (Attachment 5) seeks forfeiture of USAC's payments made to Aventure between 2007 and 2011. The IAD audit was initiated in November 2011. Any recovery by USAC for USF payments made prior to November 2010, one year before institution of the audit, would be barred by this one year statute of limitations.

### III. CONCLUSION; SUMMARY OF RELIEF REQUESTED

For the reasons set forth herein, Aventure requests that the FCC reverse the IAD audit findings and Administrative's Decision of October 29, 2013. If, as Aventure argues, USAC "made new law" in its audit findings and Administrative's Decision, that decision should have prospective application only. Aventure respectfully requests that USAC's decision to recover **begin confidential....end confidential** in federal Universal Service High Cost Program from Aventure be reversed and dismissed.



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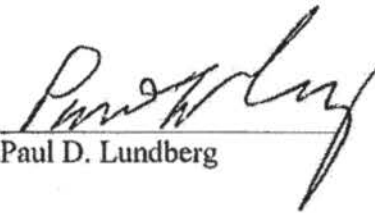


### **Certificate of Service**

I, Paul D. Lundberg do hereby certify that I have caused the foregoing Request for Review by Aventure Communication Technology, L.L.C. of Decision of the Universal Service Administrator to be served on the Universal Service Company at the following address as provided by the Universal Service Administrative Company:

Universal Service Administrative Company  
Letter of Appeal  
Billing, Collections, and Disbursements  
2000 L Street, N.W., Suite 200  
Washington, D.C. 20036

Dated May 5, 2014.

  
Paul D. Lundberg

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# **ATTACHMENT 1**



High Cost and Low Income Division

*By Certified Mail, Return Receipt Requested*

December 18, 2012

Bradley Chapman  
CFO  
Aventure Communication Technology, LLC  
401 Douglas Street, Suite 409  
Sioux City, IA 51101-1471

Re: Action to be Taken Resulting from High Cost Audit of Aventure Communication Technology, LLC (SAC 359094) Audit Report HC2011BE011

Mr. Chapman:

An audit of Aventure Communication Technology, LLC (Aventure) for Study Area Code (SAC) 359094 was conducted by USAC Internal Audit Division. The final report from that audit was recently sent to the company.

USAC's auditors determined that Aventure included ineligible lines in its quarterly line counts filed in order to receive High Cost Program support for support years 2007 through 2011. As such, USAC will recover all support paid on the ineligible lines outlined in the audit report. For support years 2007 through 2011, USAC will recover [REDACTED] High Cost Program support. For January 2012 through October 2012, USAC will recover [REDACTED] of frozen High Cost Program support. The total amount of support to be recovered will be [REDACTED].

USAC will recover these previously disbursed High Cost funds from Aventure's February 2013 High Cost Program support payment, which will be disbursed at the end of March 2013. If the recovery amount exceeds the company's disbursement for that month, USAC will invoice and collect any remaining amounts owed.

Beginning with the November 2012 support payments, USAC will reduce Aventure's monthly frozen High Cost Program support to include eligible lines only. Aventure's revised monthly frozen support amount will be [REDACTED].

If you wish to appeal this decision, you may file an appeal pursuant to the requirements of 47 C.F.R. Part 54 Subpart I. The appeal must be filed within 60 days of the date of this letter as required by 47 C.F.R. § 54.720(a). Detailed instructions for filing appeals are available at:

<http://www.usac.org/hc/about/program-integrity/appeals.aspx>

Sincerely,

//s// Universal Service Administrative Company

# **ATTACHMENT 2**



# Arent Fox

Arent Fox LLP / Attorneys at Law  
Washington, DC / New York, NY / Los Angeles, CA  
www.arentfox.com

CONFIDENTIAL  
PROPRIETARY

February 18, 2013

VIA E-MAIL

Jonathan E. Canis

Partner  
202.857.6117 DIRECT  
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jonathan.canis@arentfox.com

## LETTER OF APPEAL

High Cost and Lifeline  
Universal Service Administrative Company  
2000 L Street, NW, Suite 200  
Washington, DC 20036  
[HCLI-IndustrySupport@usac.org](mailto:HCLI-IndustrySupport@usac.org)

Re: LETTER OF APPEAL: Independent Auditor's Report on Adventure Communication Technology, L.L.C.'s Compliance with High Cost Support Mechanism Rules (SAC 359094) (USAC Audit No. HC2011BE011)

To the High Cost and Low Income Division:

This Letter of Appeal is submitted by Adventure Communication Technology, L.L.C. ("Adventure"), by its undersigned counsel, in response to USAC's letter to Bradley Chapman, CEO of Adventure, dated December 18, 2012, and pursuant to the rules of the Universal Service Administrative Company ("USAC") and Sections 54.719-54.725 of the rules of the Federal Communications Commission ("FCC"), 47 C.F.R. §§ 54.719-54.725. This letter asks USAC to reverse the conclusions set forth in the Independent Auditor Report, issued by USAC and the Internal Audit Division ("IAD"), dated May 15, 2012, and in the USAC Management Response appended to that same document at pages 71-82 (together, the "*IAD Report*"). As Adventure demonstrates in this letter, the *IAD Report* is premised on a factual misunderstanding of the circuits and services at issue, and is inconsistent with the FCC's rules and orders.

The *IAD Report* concludes that Adventure incorrectly reported lines associated with calls to conference operators on the Adventure network as USF-eligible lines. The *Report* bases this conclusion on five findings:

1. The Adventure lines do not carry supported services.
2. The Adventure lines are not "revenue producing."
3. The Adventure lines are dedicated, high capacity Special Access circuits.
4. No calls terminated to locations within the Adventure service area, because the conference bridge locations cannot be defined as "end user" premises.

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5. Adventure's designation as an Eligible Telecommunications Carrier ("ETC") is in doubt.

As Adventure discusses in this Letter of Appeal, these findings are wholly unsupported, and cannot be maintained. In fact, Adventure has already made this demonstration in its Opposition to the IAD's draft Detail Exception Worksheet ("DEW"), which was submitted to USAC on May 15, 2012. The *IAD Report* fails to rebut any of Adventure's showings, but rather simply states its disagreement with Adventure's showings, or disregards them altogether. Below, Adventure again addresses the findings of the IAD, and demonstrates that they cannot be supported. Moreover, Adventure demonstrates that IAD can cite no precedent to support its findings and conclusions – all of its interpretations of FCC rule language, and its attempts to extrapolate from FCC decisions not on point, are novel interpretations of the rules, and a case of first impression. While IAD may establish new policies and interpretations regarding these matters, such new decisions can have only prospective effect.

**I. THE IAD REPORT CONTAINS ALL THE ADMISIONS NECESSARY TO PROVE ADVENTURE'S CASE**

As discussed in this Letter of Appeal, the *IAD Report* does not present any precedential support of its conclusion that Adventure incorrectly reported lines carrying voice calls to conference bridges as eligible for High Cost support. Rather, the *Report* simply restates its earlier conclusions and dismisses without substantive analysis the arguments from Adventure's Opposition, or ignores them altogether. The *IAD Report* is significant in one respect, however – it contains admissions of fact and law sufficient to support Adventure's arguments, and to reverse the *IAD Report's* conclusions. These admissions are:

- The FCC's *Connect America Order*<sup>1</sup> "did revise the supported services." Report at 66.
  - The Aventure Opposition cites to this Order as grounds to reverse the *IAD Report's* conclusion that Adventure's calls do not "terminate" in its service area, that it's "end user" customers are not located in its service area, and that Adventure's loops are not "revenue producing." Adventure Opposition at 9,11-12.
  - As discussed further below, the *IAD Report's* attempt to dismiss the applicability of the *Connect America Order* to the audit at issue in this case are wrong as a matter of law. The *IAD Report's* admission of the impact of the *Connect America Order* compels rejection of these findings.
- Adventure provided massive amounts of documentary evidence, which Adventure submitted to demonstrate that it provided terminating access service and that all of its lines are "revenue producing." Opposition at 8. The *IAD Report* states "IAD

<sup>1</sup> *Connect America Fund*, 26 FCC Rcd 17663 (2011).  
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acknowledges that Beneficiary provided the documentation as described." *IAD Report* at 64-65.

- IAD goes on to argue that all of the documentation provided by Aventure is either inadequate or irrelevant, based on its theory that Aventure's calls do not "terminate" in its service area, and that Aventure has no "end user" customers in its service area. *IAD Report* at 64-65.
- As discussed below, IAD's theories about termination and end users must be dismissed as a matter of law. Absent these theories, Aventure's evidence is probative of the fact that Aventure's reported lines are active and "revenue generating," and IAD's acknowledgement requires that the evidence be considered in support of Aventure's case.
- The *IAD Report* concedes that voice grade lines carried over high capacity circuits are eligible for High Cost Support. The *Report* states that, if Aventure was connected to the conference bridges by DS1 lines, instead of DS3s, it could collect USF. *IAD Report* at 61.
- IAD acknowledges, as it must, that Aventure's conference bridges are located in its end office facility in Salix, Iowa (*IAD Report* at 62), and that Salix is within the Aventure service area approved by the Iowa Utilities Board ("IUB") (*id.*). "All calls were terminated at the FCSC's respective DS3 equipment located at the central office in Salix, Iowa." *Id.*
- The term "terminate" on which the *IAD Report* relies, "is not explicitly defined in the audit finding. . . ." *IAD Report* at 62.

These admissions confirm that Aventure has documented its line counts and termination points for the lines it has reported; and that FCC rules govern the services it provides. Below, Aventure demonstrates that IAD's only stated objections do not reflect incorrect reporting, but rather interpretations of federal telecom law and policy that cannot be justified in light of the precedent that Aventure has provided.

## II. THE CONCLUSION THAT AVENTURE DOES NOT PROVIDE SUPPORTED SERVICES MISREADS THE PLAIN LANGUAGE OF § 54.101 OF THE COMMISSION'S RULES AND IGNORES AVENTUE'S ARGUMENTS

The primary rationale for the *IAD Report's* conclusion that Aventure's reported lines are not eligible for High Cost support is that Aventure's service to conference operators does not "provide" the functionalities required by 47 C.F.R. § 54.101(a). *IAD Report* at 3, 8, 57-60 and *passim*. On pages 5-6 of the *Report*, the IAD lists the specified "services or functionalities that shall be supported by federal universal service support mechanisms," and concludes that

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Aventure does not provide all of the functions, and so its reported lines are not eligible for High Cost support.

The *IAD Report* can only reach this conclusion by conflating the terms “offering” and “providing.” Section 54.101(b) states that “An eligible telecommunications carrier must offer voice telephone service as set forth in paragraph (a) of this section in order to receive federal universal service support. But IAD reads this provision as requiring an ETC to provide all enumerated services. This inconsistency is illustrated by the *IAD Report*’s summary Condition: “The Beneficiary did not provide the FCSC customers with single-party service or its functional equivalent, access to emergency services, access to operator services, or access to directory assistance. To receive federal universal service support, an ETC must offer each of the services set forth in 47 C.F.R. § 54.101(a).” *IAD Report* at 8 (emphasis added). So while the *IAD Report* correctly reflects the language of the rules, it applies the rules in direct contravention of that language.

Aventure directly addressed this issue in its Opposition at 2-4, and demonstrated that its switch contains all the functions required by § 101.54(a) and (b), and in fact does provide these features to its full-service retail customers. In response, the *IAD Report* simply reasserts the conclusions from the DEW that Aventure does not “provide” these functionalities in terminating calls to conference operators. IAD states that calls to conference bridges are “one way” terminating services, and so do not provide in-bound and outbound calling service (*Report* at 57-58), emergency 911 service (*id.* at 58-59), operator service and directory assistance (*id.* at 59), and concludes that this failure to provide such services renders Aventure’s lines to conference bridges ineligible for High Cost support.

In making this finding, IAD is establishing a new *per se* rule of law – no one-way circuits can be supported by High Cost USF. However, nowhere in the *IAD Report*, the DEW, or in other communications with IAD or USAC personnel has IAD identified any FCC or federal court decision that supports this finding. IAD has had no lack of opportunity to present such precedential support – counsel for Aventure first asked this question of IAD Staff in the DEW post-audit conference call held on May 8, 2012. Aventure made the point that the DEW conclusions were completely unsupported by precedent throughout its Opposition. Finally, Aventure submitted a Freedom of Information Request to the FCC, and copied USAC, on May 15, 2012. That request expressly requested if the FCC, USAC or the courts had ever issued any decisions regarding whether circuits carried over high capacity lines to terminate service to conference and chat line operators are eligible for High Cost support. See Aventure Opposition at Attachment 6. Since filing, the FCC and Aventure have come to agreement on the price of any necessary research related to the FOIA request, but the FCC has to date not responded to Aventure’s FOIA request. Neither the IAD nor the FCC have provided any evidence of a



decision by IAD, USAC, the FCC or a federal court to support the *IAD Report's* interpretation of the language of §54.101, and to the best of Adventure's knowledge, no such precedent exists.

Finally, the *IAD Report* states that an Adventure officer "verbally admitted that all of the FCSC accounts did not have access to and were not set-up for emergency services, operator services or directory assistance." Adventure vehemently denies this assertion. At all times during the audit, and in its written communications with USAC and IAD, Adventure has confirmed that its switch is a fully functional "Class 4/5" switch and is equipped to provide emergency calling, operator services and directory assistance, and that Adventure provides these services to its more than 300 retail service users. Adventure Opposition at 3. Adventure does not provide these services to its conference operator customers because they cannot use such services.

**III. THE IAD REPORT'S CONCLUSION THAT THE SERVICES AT ISSUE ARE SPECIAL ACCESS DEDICATED CIRCUITS IS WRONG AS A MATTER OF FACT AND LAW**

The *IAD Report* concludes that the facilities used by Adventure to terminate voice grade calls to its conference operator customers are DS3 special access services, and so are not eligible for High Cost support. *IAD Report* at 60, 73. The *Report* expressly states that it ignores Adventure's arguments that analogize its transport circuits to voice grade circuits transmitted over PBX or Centrex services. *Id.* at 60. Finally, IAD concludes that the Adventure service is "merely a DS3 circuit with no direct connection to any specific end user." *Id.* at 71. As discussed below, in all respects, the *IAD Report* is wrong.

**A. The Commission's Rules Make Clear That Voice-Grade Switched Access Lines Terminated Over High Capacity Circuits Are Not "Special Access"**

The *IAD Report* cites several sections of the FCC's Part 36 rules, and interprets their language as determinative that the facilities used by Adventure to terminate voice grade calls to its conference operator customers must be defined as DS3 special access circuits. *Report* at 61, 73. In making its conclusions, the IAD cites to no precedent – no FCC or court decisions that apply the language of the rules in the way IAD asserts. In fact, there is no precedent that can support the IAD's interpretation of the rules language. In fact, the plain language of more specific rules under part 51, and industry practice as documented by NECA presentations, proves the contrary.

Part 51.5 of the Commission's rules contains the definition of "business line":

*Business line.* A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC. The number of

business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, business line tallies:

- (1) Shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services,
- (2) Shall not include non-switched special access lines,
- (3) Shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 "business lines."

47 C.F.R. § 51.5 (emphasis added). The language of Part 51 of the Commission's rules, which is more specific in defining what constitute "lines" for filing purposes, must take precedent over IAD interpretations of less specific rule language. Moreover, as discussed in the following sections, this interpretation of the more specific rule language is fully supported by NECA publications and FCC rulings.

In addition, the IAD conclusion that the Adventure facilities do not directly connect with an end user, and so do not meet the definition of Category 1 Loops under 47 C.F.R. § 36.152(a)(1) (*IAD Report* at 71) is wrong as a matter of fact and law. Section IV, below describes in detail that, under controlling FCC precedent, as a matter of law, Adventure's conference operator customers are "end users."

**B. The FCC's Reports And Reporting Instructions Have Always Defined Special Access Service As A Non-Switched Service**

Special access service – including DS1 and DS3 service – has always been described by the FCC as "non-switched" service.<sup>2</sup> In contrast, switched services provided over high capacity circuits have consistently been reported according to the voice grade circuits they carry: "For switched loops served via a concentrator or carrier system, count the actual number of customer lines served, not the transmission channels at the wire center." Federal-State Board on Universal Service, 12 FCC Rcd 9803, 9806 (1997). "ISDN and other digital access lines should be reported as 64 kbps equivalents. A fully-equipped DS-1 line, for example, corresponds to 24 64 kbps equivalents." Revision of ARMIS annual Summary Report (FCC Report 43-01), 17 FCC Rcd 25421, 25450 (2002) (emphasis added).

<sup>2</sup> E.g., Industry Analysis and Technology Division, Local Telephone Competition: Status As Of December 31, 2011, 2013 WL 164840 (F.C.C., Public Notice, January 2013) at 48.  
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In Attachment 5 to its Opposition, Aventure provided extensive evidence that the service it provided to its conference operator customers was switched access service, which generated call billing detail that accounted for minutes of traffic at each NPA-NXX assigned to a conference operator customer. Only switched services can generate this type of information – special access circuits cannot. Given the FCC's well-documented and consistent treatment of switched access services carried over high-capacity facilities, the *IAD Report's* conclusion that Aventure's DS3 facilities are special access must be reversed.

C. NECA Has Made Clear That Voice-Grade Switched Access Services Terminated Over High Capacity Circuits Are Not "Wideband" Or "Special Access"

The *IAD Report* concludes that Aventure's service to its conference operator customers constitutes DS3 "special access" service, and such service is not eligible for High Cost support. *IAD Report* at 60, 71. While it is correct that special access service is not supported by USF, it is demonstrably incorrect that Aventure's service to its conference operator customers can be so classified. As discussed in subsection (E) below, NECA's Loop Count Guide allows for the reporting of high-capacity PRI ISDN lines as eligible for High Cost support. This practice means that IAD's contention that all high capacity circuits are special access, and must be excluded from USF-eligible line counts, cannot be sustained.

Moreover, NECA expressly has found that channelized high capacity circuits are fully eligible for High Cost support. In a NECA presentation entitled "Universal Service Fund, Loops, Lines and Miscellaneous," NECA defines loops that are, and are not, eligible for High Cost support. A copy of the NECA presentation is appended to this letter at Attachment 1. NECA begins by acknowledging that "The loop can be provisioned in many ways using a combination of technologies and transmission mediums," and includes an illustration showing home-run voice-grade copper loops, and high capacity circuits terminating to a concentrator and a remote office. NECA presentation, Attachment 1, at slide 8. The latter example reflects Aventure's network. The NECA presentation goes on to explain:

- o Category 2 – Wideband
  - A communication channel of a bandwidth equivalent to twelve or more voice grade channels. For example:
    - DS1
    - DS3
    - SDSL > 768 Kbps (Data Only)
    - ADSL (Data Only)

- Does not include channelized services provided over a T1 facility.  
For example:
  - 14 voice grade services provisioned over a T1 facility
  - ISDN
  - Local Digital Transport Service ("Super Trunk") or like service

NECA presentation, Attachment 1, at slide 16 (emphasis added). The NECA presentation correctly reflects industry practice, and Adventure's line-reporting practices have been fully compliant with the NECA approach at all times.

**D. Since 2001, The FCC Consistently Has Recognized That Calls Terminated To Conference Operators And Chat Lines Are Switched Access Service**

In 1996, AT&T filed formal complaints before the FCC against three rural LECs. Each AT&T complaint charged that the practice of invoicing tariffed per-minute switched access charges for calls delivered to chat line operators was unreasonable. In a series of decisions in 2001 and 2002, the FCC rejected all three AT&T complaints, and allowed the LECs to collect their tariffed per-minute switched access charges for such traffic. *AT&T Corp. v. Jefferson Tel.*, 16 FCC Rcd. 16130 (2001); *AT&T Corp. v. Frontier Commc'ns of Mt. Pulaski, Inc.*, 17 FCC Rcd 4041 (2002); *AT&T Corp. v. Beehive Tel. Co., Inc.*, 17 FCC Rcd 11641 (2002).

The next time the FCC expressly addressed the classification of calls terminated to chat lines and conference operators was in 2007. In May, 2007, Qwest brought a formal complaint against an Iowa ILEC, contesting the collection of access charges on calls terminating to conference operators. Later that year, the FCC issued its order in *Qwest Commc'ns Corp. v. Farmers and Merchants Mut. Tel. Co.*, 22 FCC Rcd 17973 (2007) ("*Farmers & Merchants Order*"), finding that Farmers and Merchants exceeded its rate of return, but that its tariff was effective, and "deemed lawful." Because the tariff was lawful, it could be enforced, and Farmers and Merchants could collect its tariffed, per minute switched access rates for terminating calls to conference operators.

In November, 2009, the FCC issued its second order on reconsideration of the *Farmers & Merchants Order*, and reversed its finding that the Farmers and Merchants tariff was lawful. The FCC explained that it received new evidence that the ILEC "backbilled" its customers for services during the course of the litigation. The FCC never went further, either to define the service, or to determine if switched access rates could be collected – the parties subsequently settled their dispute, and the FCC dismissed the case with prejudice. *Qwest Commc'ns Corp. v. Farmers and Merchants Mut. Tel. Co.*, 27 FCC Rcd 9377 (2012). Thus, the *Qwest v. Farmers and Merchants* case proceeded from an initial finding that the termination of calls to conference operators constitutes switched access service, and never reversed that decision. To the extent that a carrier may not be

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able to enforce payment under its switched access tariff for such traffic, the FCC must make a specific finding to that effect. Of course, the FCC has never made such a finding against Adventure, and at all times relevant to the IAD audit, and continuing to date, Adventure has had a valid, and enforceable switched access tariff on file.

And as Adventure discussed at length in its Opposition, the FCC's 2011 decision in its *Connect America Order* explicitly found that calls to conference operators are switched access services, billable at per-minute switched access rates. *Connect America Fund*, 26 FCC Rcd 17663, 17877-82 (2011). Thus, in every case in which the FCC has addressed the classification of calls terminated to conference operators and chat line services – from 2001 through 2011 – it has consistently found that the service is switched access service, billed at per minute switched access rates. In light of this established line of precedent, the IAD may not interpret the FCC's rules to hold that the same lines must be classified as special access.

Finally, as discussed in Section VI below, even the Iowa Utilities Board has confirmed that Adventure's termination of calls to its conference operator customers constitutes switched access service. Adventure consistently has demonstrated that rulings by the IUB do not constitute directly applicable precedent, because those rulings apply Iowa state law, and that past rulings have been inconsistent with FCC rules and policies. However, the IUB's decisions lend support to Adventure's position that its services are switched access service. As noted below, the IUB has defined the termination of calls to conference operators and chat lines as "High Volume Access Service" and has opened a new proceeding to prescribe switched access rates that will be tariffed and enforced for the provision of such service. In this regard, the IUB decisions are fully consistent with the established FCC precedent discussed above, and support the conclusion that Adventure's service is switched access, not special access.

**E. The IAD Report Admits That Voice-Grade Lines Delivered Over High-Capacity Circuits Are Eligible For High Cost Support, And This Conclusion Is Supported By The NECA Loop Count Guide**

The *IAD Report* refers to the NECA Loop Count Guide, and notes that Primary Rate Interface Integrated Services Digital Network ("PRI ISDN") circuits should be reported as five loops. *IAD Report* at 7, 61. This admission directly undercuts the *IAD Report*. IAD acknowledges, as it must, that NECA's rules confirm that PRI ISDN lines are eligible for High Cost support, even though they are high capacity circuits. This cannot be squared with the IAD conclusion that none of Adventure's high capacity circuits are eligible for High Cost support. It is true that NECA does not allow High Cost recovery for the maximum of 24 voice-grade equivalent lines that could be carried by a PRI ISDN circuit – it allows reporting of only 5 lines per PRI. However, IAD holds that Adventure cannot report any circuits at all, and this conclusion cannot be sustained in light of NECA's established practice for PRI ISDN circuits.